Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	)	CC Docket No. 02-33
	)	
Universal Service Obligations of Broadband Providers	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Dockets Nos. 95-20, 98-10

COMMENTS

The Part-15 Organization, Inc. ("Part-15.Org"), by its counsel and pursuant to Section 1.405(a) of the Commission's Rules, hereby submits its comments with respect to the Commission's *Notice of Proposed Rulemaking* (the "*NPRM*") in the above-captioned proceeding.[1]

Part-15.Org is the trade association of the wireless broadband industry. Its members include service providers, equipment vendors, Commission licensees, technical consultants and others who offer or support the provision of wireless broadband service to, among others, residential customers, businesses and educators in markets across the United States. To address the specific needs of the growing number (over 2000 nationwide) of wireless Internet service providers ("WISPs") that utilize license-exempt spectrum, Pat-15.Org has a direct interest in the Commission's request for comment on whether the Commission should require providers of

[1] FCC 02-42 (rel. Feb. 15, 2002).

wireless broadband service to contribute to the Universal Service Fund ("USF").[2] As discussed below, under no circumstances should the Commission adopt new USF reporting and contribution obligations that create additional regulatory and economic obstacles to deployment of wireless broadband service, particularly by smaller wireless providers who serve areas where consumers have few if any options for broadband service.

By now it is well established that wireless technology is a critical component of the Commission's broader effort to ensure that broadband service is deployed to all Americans on a reasonable and timely basis. For example, in its most recent Section 706 Report to Congress on the status of broadband deployment in the United States, the Commission cited statistics indicating that fixed wireless technology may account for as much as 15 to 20 percent of the U.S. market for "high-speed" Internet access service by the year 2005.[3] Such projections arise from the fact that cable modem and DSL services cannot or will not by themselves meet consumer demand for broadband, especially in rural and smaller markets.[4] The scenario is equally

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[2] *NPRM* at ¶ 79.

[3] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, FCC 02-33, at ¶ 72 (rel. Feb. 6, 2002) (the "*Third Section 706 Report*").

[4] Due to technical issues that limit the reach of cable modem and DSL service, many consumers have access to only one or the other. *See, e.g.,* "High-Speed Services for Internet Access: Subscribership as of June 30, 2001," Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, Table 1 (August 2001) (attached as Appendix C to the *Third Section 706 Report*) (stating that "high-speed" cable modem lines in service outnumber ADSL high-speed lines by nearly two to one) (the "*2001 High-Speed Access Report*"). As a result of the paucity of competition between cable modems and DSL, some cable providers and ILECs have increased the price for residential broadband services since the recent demise of many competitive DSL providers. *See, e.g.,* Stern, "Comcast to Raise Internet Service Fees," *The Washington Post*, at E11 (Sept. 19, 2001) (discussing Comcast's cable modem service fee increase from $32.95 to $39,95 per month); Young, "Choose a Cable Modem or DSL?," *at* http://interactive.wsj.com/archive (Sept. 10, 2001) ("[A] meltdown among DSL competitors to the regional Bell giants has killed off much of the competition in DSL services. The collapse has driven many would-be customers away from start-ups for fear they might go out of business overnight – and played into the hands of the dominant cable and phone companies. . . Broadband providers have been quick to take advantage of the situation. . . On average, rates have gone up about $10 per month.");

troublesome in larger urban markets, where highly consolidated cable multiple system operators ("MSOs") and incumbent local exchange carriers ("ILECs") are by far the dominant providers of broadband service, via wireline cable modem and DSL technologies, respectively.[5] The need for wireless alternatives, in other words, remains as compelling as ever.[6]

By the same token, "broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market,"[7] and indeed the full potential of wireless broadband service will never be realized if wireless broadband providers are saddled with additional regulatory and economic obligations or, alternatively, regulatory and economic uncertainty that obstruct deployment of service in areas where it is needed the most. Here Commissioner Martin's perspective on the *NPRM* bears repeating:

> In this time of protecting the Internet from taxation – of "removing barriers and encouraging investment" – it is troubling to announce that we will consider placing new taxes on broadband providers. While announcing our consideration of the issue is not the same thing as enacting the obligations themselves, the

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Plosinka and Coffield, "Top-Dollar DSL," *Interactive Week*, at 14-15 (Feb. 19, 2001) (reporting that SBC Communications "is first out of the chute, quietly boosting standard residential [DSL] packages that sold for $40 per month last fall to $50," and attributing this development to the fact that "[I]n the last six months, many competitive residential DSL providers have gone bankrupt, leaving consumers in many U.S. regions a single choice for DSL service: the local phone company.").

[5] *See, e.g.,2001 High-Speed Access Report*, Tables 1 and 2.

[6] *See, e.g., Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities (Declaratory Ruling and Notice of Proposed Rulemaking)*, GN Docket No. 00-185 and CS Docket No. 02-52, at ¶ 6 (rel. Mar. 15, 2002) ("We recognize that residential high-speed access to the Internet is evolving over multiple electronic platforms, including wireline, cable, terrestrial wireless and satellite. By promoting the development and deployment of multiple platforms, we promote competition in the provision of broadband capabilities, ensuring that public demands and needs can be met.") (the "*Cable Modem Declaratory Ruling and NPRM*"); Remarks of Commissioner Kathleen Q. Abernathy at Bloomberg Telecom Day, New York, NY (Mar. 6, 2002) ("Today we effectively have two major platforms providing broadband service – cable and telephone. Each, however, suffers from some technological limitations. And each has significant and distinct regulatory obligations. As I look at this market and consider its importance to consumers, I believe one of the FCC's goals should be facilitating the development of third and fourth broadband consumer 'pipes.' I also believe that wireless and satellite services offer significant promise as complementary and competitive broadband providers.").

[7] *Cable Modem Declaratory Ruling and NPRM* at ¶ 5.

> uncertainty created by the announcement – *particularly for wireless, cable, and satellite providers* – will make deployment only more difficult.[8]

Commissioner Martin's point is well taken where wireless broadband service is concerned. As an initial matter, the Commission's contemporaneous *Further Notice of Proposed Rulemaking* in CC Docket No. 96-45 *et al.* has already raised substantial uncertainty as to whether the Commission's methodology for calculating USF contributions will even apply to wireless broadband providers. Specifically, the Commission has proposed to assess USF contributions on the number and capacity of connections provided to the public switched telephone network ("PSTN") rather than on a contributor's end-user revenues for interstate telecommunications services, as is currently done today.[9] Under that proposal, however, broadband providers (wireless or otherwise) would not be required to make USF contributions, since a broadband connection does not provide a subscriber with access to the PSTN independent of the subscriber's voice-grade connection.[10]

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[8] Separate Statement of Commissioner Kevin J. Martin (approving in part and dissenting in part) re: *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers (Notice of Proposed Rulemaking)*, CC Docket No. 02-33, FCC 02-42 (rel. Feb. 15, 2002), at 2 (emphasis added). *See also*

[9] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, FCC 02-43, at ¶ 2 (rel. Feb. 26, 2002).

[10] *See id.* at ¶ 67 ("[I]f a customer purchases both a voice-grade connection and an information service, such as voice-mail or dial-up Internet access, only the voice-grade connection would be subject to a per-connection assessment. Such an information service would not be subject to a separate assessment regardless of whether it is provided by the carrier that also provides the voice-grade connection or is provided by an independent information service provider. This is because the information service does not provide access to a public network that is independent from the voice-grade connection."). *See also* "Internet Over Cable: Defining the Future In Terms of the Past," OPP Working Paper No. 30, at 13 (August 1998) ("The basic operational characteristics of the Internet are that it is a distributed, interoperable, packet-switched network. It is comprised of an interconnected web of "host computers, each of which can be accessed from virtually any point on the network. Routers (other computers) throughout the network regulate the flow of data at each connection point, in contrast to the centralized public switched telephone network, in which all users within a local exchange connect to a single switch location.").

In any case, even if the Commission were to change course in CC Docket No. 96-45 and somehow devise a methodology that would require wireless broadband providers to contribute to the USF without running afoul of any relevant statutory limitations, there are a number of reasons why at a minimum smaller wireless providers can and should be exempt from USF reporting and contribution obligations. First and foremost, the Commission cannot forget that the guiding principle of "competitive neutrality" governs its determinations as to whether to impose USF reporting and contribution obligations on new classes of service providers.[11] That principle would militate against subjecting wireless broadband providers of *any* size to USF reporting and contribution obligations, since even the largest wireless broadband providers have nowhere near the penetration levels of the highly consolidated cable MSOs and incumbent LECs that offer cable modem and DSL services. The Commission's *Third Section 706 Report* confirms as much – there, the Commission found that 5.2 million lines using cable modem technology were in service at the end of June 2001, and that 2.7 million DSL lines were in service as of that date.[12] By contrast, the Commission found that terrestrial fixed wireless technologies accounted for between 50,000 and 150,000 high speed lines by the end of June 2001.[13]

Furthermore, the Commission's existing USF rules already include a *de minimis* exemption for smaller providers of telecommunications services "where the administrative cost of collecting contributions from a carrier or carriers would exceed the contribution that carrier would otherwise have to make under the formula for contributions selected by the

[11] *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9183-4 (1997) (the "*USF Report and Order*").

[12] *Third Section 706 Report* at ¶¶ 44, 50-51. The Commission also found that 93% of all DSL lines in service were controlled by ILECs. *Id.* at ¶ 51.

[13] *Id.* at ¶ 55.

Commission."[14] It should be noted here that strict application of the Commission's USF reporting and contribution requirements to wireless broadband providers would in all likelihood increase the costs of administrating the USF fund substantially, since it would require USF oversight of smaller licensed providers and potentially thousands of license-exempt Part 15 operators who have only a limited number of subscribers and thus only a limited amount of subscriber revenue.[15] Given the Commission's observation that "there are significant operational difficulties associated with determining the amount of . . . an Internet service provider's revenues to be assessed for universal service purposes and with enforcing such requirements,"[16] imposing such additional burdens on the administration of the USF will entail significant costs with little or no countervailing benefit to the intended beneficiaries of the fund.

Finally, the Commission has previously observed that in some cases the public interest analysis vis-à-vis who should be required to contribute to the USF "requires a more expansive examination of the goals of universal service."[17] As Section 254(b) makes clear, those goals include the provision of "access to advanced telecommunications and information services" to "all regions of the nation."[18] That, however, cannot be achieved if smaller wireless broadband providers are handicapped by USF obligations that they are not equipped to meet. The simple fact is that smaller wireless broadband providers with only a few hundred or even a few thousand subscribers do not have the extra personnel and other resources to devote to, among other things,

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[14] *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, 11570 (1998) (the "*1998 USF Report*"). Specifically, the Commission's Rules provide that entities whose annual universal service contribution is less than $10,000 are not required to contribute to the USF. 47 C.F.R. § 54.708.

[15] *See, e.g.,* Gurley, "Above the Crowd: Why Wi-Fi Is the Next Big Thing," *Fortune* (Mar. 5, 2001) (discussing projected deployments of license-exempt devices), at http://www.fortune.com/indexw.jhtml?channel=artcol.jhtml&doc_id=200624.

[16] *1998 USF Report* at 11569-70.

[17] *Id.* at 11568.

identifying and tracking revenues that are subject to USF requirements, calculating their periodic USF contributions, preparing and submitting USF fund worksheets, adjusting subscriber billing practices to accommodate any pass-throughs of USF contributions, monitoring those billing practices to ensure compliance with the Commission's rules, and responding to inevitable subscriber questions/complaints regarding USF pass-throughs. In turn, the diversion of existing personnel and resources from deployment and marketing of service to USF compliance puts smaller wireless broadband providers at risk of losing subscribers to already-dominant incumbent cable MSOs and ILECs, to the ultimate detriment of consumers who have no other options for broadband service.[19] WCA submits that it is impossible to square that result with either the goals of universal service or the Commission's policies on broadband deployment generally, and that the Commission therefore should eliminate any further uncertainty about the matter by issuing a clear and unequivocal statement that it will not proceed down that path.

Respectfully submitted,

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[18] 47 U.S.C. § 254(b)(2).

[19] *See, e.g.,* Weber, "Satellite Radio Stations' Complaints Could Force FCC to Limit Wi-Fi," *The Wall Street Journal*, at B1 (Apr. 1, 2002) ("The [FCC] wants to loosen constraints on cable and telephone companies. But if the goal is real competition, and not a cable-phone duopoly in broadband, they must not hamstring Wi-Fi and other wireless technologies.").